

DRAFT RULES – NOT APPROVED BY THE NMMB

TITLE 16 OCCUPATIONAL AND PROFESSIONAL LICENSING
CHAPTER 10 MEDICINE AND SURGERY PRACTITIONERS
PART 18 CERTIFICATIONS FOR THE USE OF MEDICAL CANNABIS PURSUANT TO THE
LYNN AND ERIN COMPASSIONATE USE ACT

16.10.18.1 ISSUING AGENCY: New Mexico Medical Board, hereafter called the board.
[16.10.13.1 NMAC – 3/28/13]

16.10.18.2 SCOPE: This part governs the certification of the use of medical cannabis by a physician or physician assistant pursuant to the Lynn and Erin Compassionate Use Act at NMSA 1978, Section 26-2B-1 et seq.
[16.10.13.1 NMAC – 3/28/13]

16.10.18.3 STATUTORY AUTHORITY: These rules are promulgated pursuant to and in accordance with the Medical Practice Act, Sections 61-6-1 through 61-6-35 NMSA 1978 and Section 6.1-1-29 of the Uniform Licensing Act
[16.10.13.1 NMAC – 3/28/13]

16.10.18.4 DURATION: Permanent
[16.10.13.1 NMAC – 3/28/13]

16.10.18.5 EFFECTIVE DATE: ____, 2013, unless a different date is cited at the end of a section.
[16.10.13.5 NMAC – Rp 16 NMAC 10.13.5, 4/18/02]

16.10.18.6 OBJECTIVE: This part establishes rules for the proper practice of medicine whereby practitioners can issue a “written certification,” as that term is defined at NMSA 1978 Section 26-2B-3(H), to a “qualified patient,” as that term is defined at NMSA 1978 Section 26-2B-3(G), for medical cannabis.
[16.10.13.1 NMAC – 3/28/13]

16.10.18.7 DEFINITIONS:

- A.** “The Act” means the Medical Practice Act at NMSA 1978, Section 61-6-1 et seq.
- B.** “The Board” means the New Mexico Medical Board or its agents.
- C.** “Cannabis” means all parts of the plant cannabis sativa and cannabis indica, whether growing or not, the resin extracted from any part of the plant, and every compound, manufacture, salt, derivative, mixture, or preparation of the plant or its resin.
- D.** “CUA” means the Lynn and Erin Compassionate Use Act at NMSA 1978, Section 26-2B-1 et seq.
- E.** “Debilitating Medical Condition” means:
 - (1) cancer;
 - (2) glaucoma;
 - (3) multiple sclerosis;
 - (4) damage to the nervous tissue of the spinal cord, with objective neurological indication of intractable spasticity;
 - (5) epilepsy;
 - (6) positive status for human immunodeficiency virus or acquired immune deficiency syndrome;
 - (7) admission into hospice care in accordance with rules promulgated by the department; or
 - (8) any other medical condition, medical treatment or disease as approved by the departmentwhich results in pain, suffering or debility for which there is credible evidence that medical use cannabis could be of benefit.
- F.** “The Department” means the New Mexico Department of Health or its agents.
- G.** “Department-approved conditions “ means a Debilitating Medical Condition identified by Department Rule.
- H.** “Practitioner” means a person licensed by the Board to prescribe and administer drugs that are subject to the Controlled Substances Act, Sections 30-31-1 et seq., NMSA (1978).
- I.** “PMP” means a prescription monitoring report issued by the New Mexico Board of Pharmacy.

J. **“Qualified Patient”** means a resident of New Mexico who has been diagnosed by a practitioner as having a debilitating medical condition and has received a registry identification card issued pursuant to the requirements of the CUA or department rules.

K. **“Statutorily-approved condition”** means a Debilitating Medical Condition identified in the CUA

L. **“Written Certification”** means a statement in a patient's medical records or a statement signed by a patient's practitioner that, in the practitioner's professional opinion, the patient has a debilitating medical condition and the practitioner believes that the potential health benefits of the medical use of cannabis would likely outweigh the health risks for the patient. A written certification is not valid for more than one year from the date of issuance.
[16.10.13.1 NMAC – 3/28/13]

16.10.18.8 JURISDICTION OF THE BOARD: The issuance of a Written Certification by a Practitioner constitutes the practice of medicine as defined at NMSA 1978, Section 61-6-6(J).
[16.10.13.1 NMAC – 3/28/13]

16.10.18.9 APPLICABILITY OF THE ACT AND BOARD RULES: All provisions of the Act and Board rules promulgated in this Chapter shall apply to the issuance of a Written Certification where relevant, except as otherwise provided herein.
[16.10.13.1 NMAC – 3/28/13]

16.10.18.10 INTERPRETATION WITH DEPARTMENT RULES: The provisions of this Part shall be interpreted consistently and harmoniously with any applicable Department Rules whenever possible. In the event of a conflict with Department rules, this Part shall apply.

16.10.18.11 REQUIREMENTS FOR WRITTEN CERTIFICATIONS:

A. **General rules.** Any physician or physician's assistant issuing a Written Certification may only do so subject to the ethics of sound medical practice, which includes, but is not limited to, the provisions of this Part. The standard of care for issuing a Written Certification is the same as any reasonable and prudent Practitioner would follow when approving or recommending any other medication, and include the following:

- (1) History and complete examination of the patient;
- (2) Development of a treatment plan with objectives;
- (3) Provision of informed consent including discussion of side effects;
- (4) Periodic review of the treatment's efficacy;
- (5) Consultation as necessary; and
- (6) Proper record keeping that supports the decision to recommend the use of medical cannabis.

B. **Physician-patient relationship required.** A Practitioner shall only issue a Written Certification after establishing a physician-patient relationship with the person seeking such Written Certification

C. **Supporting documentation.**

(1) **Department requirements:** Practitioners must comply with all Department rules with respect to the reliance on credible evidence that supports a determination of a Debilitating Medical Condition by a Practitioner. The requirements of this subpart are in addition to those imposed by Department rule.

(2) **Statutorily-approved conditions.** A Practitioner may not rely on the diagnosis of another qualified licensee more than four years prior to the date the Practitioner issues the Written Certification.

(3) **Department-approved conditions.** A Practitioner may not rely on the diagnosis of another qualified licensee more than two years prior to the date the Practitioner issues the Written Certification.

(4) **Chronic Pain.** The rules and requirements of NMAC 16.10.14 shall specifically apply to a Written Certification for chronic pain.

(5) **Renewals.** The supporting documentation for a renewal of a Written Certification is the same as for an initial Written Certification.

[16.10.13.1 NMAC – 3/28/13]

16.10.18.12 PMP REQUIREMENTS:

A. A Practitioner who wishes to issue a Written Certification shall register with the board of pharmacy to become a regular participant in PMP inquiry and reporting.

B. A Practitioner shall, before issuing a Written Certification, obtain a patient PMP report for the preceding 12 months.

[16.10.13.1 NMAC – 3/28/13]

16.10.18.13. CONSULTATION REQUIREMENTS:

Before issuing a Written Certification, a Practitioner shall inform their patient's other health care providers, upon which the Practitioner is relying for supporting documentation, of the patient's request for Written Certification, and shall otherwise consult with such other health care providers as appropriate.

[16.10.13.8 NMAC – Rp 16 NMAC 10.13.8, 4/18/02; N, 12/30/05]

History of 16.10.18 NMAC:

History of Repealed Material:

16 NMAC 10.18 – Repealed ??